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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Marcy Mudd,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-23-00409-TUC-RCC

ORDER

15 On August 2, 2024, Magistrate Judge Lynette C. Kimmins issued a Report and
16 Recommendation ("R&R") in which she recommended the Court deny Plaintiff Marcy
17 Mudd's appeal of the Administrative Law Judge's ("ALJ") denial of disability benefits.
18 (Doc. 21.) Plaintiff filed an objection to the R&R (Doc. 22), and the Commissioner filed
19 a response (Doc. 23). Having reviewed the R&R, objection, response, and upon de novo
20 review of the issues raised, the Court adopts the recommendation of the Magistrate Judge
21 and affirms the Commissioner's decision.

22 **I. STANDARD OF REVIEW**

23 The standard of review of a magistrate judge's R&R is dependent upon whether or
24 not a party objects: where there is no objection to a magistrate's factual or legal
25 determinations, the district court need not review the decision "under a *de novo* or any
26 other standard." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). However, when a party
27 objects, the district court "must "determine de novo any part of the magistrate judge's
28 disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. §
3 636(b)(1). Moreover, “while the statute does not require the judge to review an issue *de*
4 *novo* if no objections are filed, it does not preclude further review by the district judge,
5 *sua sponte* or at the request of a party, under a *de novo* or any other standard.” *Thomas*,
6 474 U.S. at 154.

7 **II. PLAINTIFF’S OBJECTIONS**

8 Plaintiff’s objection argues the ALJ did not give “clear and convincing reasons to
9 disregard the testimony regarding *disabling* symptoms” because Plaintiff’s symptoms
10 were not “contradicted by the evidence.” (Doc. 22 at 2–3.) Plaintiff claims the ALJ’s
11 reasoning failed to provide the substantial evidence necessary to uphold the decision. (*Id.*
12 at 2.)

13 Plaintiff indicates the Magistrate Judge found the ALJ properly determined
14 Plaintiff’s symptoms were not as disabling as alleged because the pain subsided
15 intermittently and Plaintiff had normal joint exams. (*Id.*) However, Plaintiff argues the
16 ALJ’s observations were not inconsistent with Plaintiff’s claim that her edema and pain
17 were intermittent and required her to rest and put her feet up after a few hours of sitting
18 and driving and prevented her from working “on a regular and continuing basis.” (*Id.* 2–
19 3.) Therefore, Plaintiff claims the Magistrate Judge’s determination that the ALJ’s
20 decision should be affirmed is erroneous. (*Id.* at 1.)

21 An ALJ’s determination will be affirmed unless “the ALJ’s findings are based on
22 legal error or are not supported by substantial evidence in the record as a whole.”
23 *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001). Substantial evidence is more
24 than a scintilla but less than a preponderance. *See Richardson v. Perales*, 402 U.S. 389,
402 (1971).

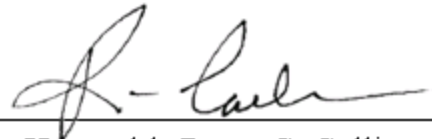
25 Upon review, the Court finds the Magistrate Judge did not err. The ALJ
26 considered the intermittent nature of Plaintiff’s pain and determined that, more often than
27 not, the medical findings were normal. (AR 50–51.) This provides the specific findings
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1 and reasoning for the ALJ's decision and this Court cannot "substitute its judgment for
2 that of the ALJ." *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992).

3 Accordingly, IT IS ORDERED:

- 4 1) Magistrate Judge Kimmins's R&R is ADOPTED. (Doc. 21.)
5 2) The Commissioner of Social Security's final decision is AFFIRMED.
6 3) The Clerk of Court shall docket accordingly and close the case file in this matter.

7 Dated this 18th day of September, 2024.
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12 Honorable Raner C. Collins
13 Senior United States District Judge
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